

# THE NEW OHIO ESTATE TAX

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After seventy-five years of experience with collateral and direct inheritance taxes,<sup>1</sup> Ohio has now moved into the estate tax field.<sup>2</sup> The new law, enacted by the 107th General Assembly,<sup>3</sup> became effective as to estates of persons dying on and after July 1, 1968; while the former law<sup>4</sup> continues to be effective as to successions to property resulting from deaths occurring on or before June 30, 1968.<sup>5</sup>

Although there are some important differences, the new law is patterned upon the federal estate tax.<sup>6</sup> It is the purpose of this analysis to discuss the similarities and differences, and also to explain the more important procedural aspects. The basic formula for computing the Ohio estate tax, like similar taxes elsewhere, is deceptively simple, and may be expressed thus:

Gross estate — exemptions — deductions = taxable estate.

Taxable estate × tax rates — credits = tax.

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<sup>1</sup> The first Ohio inheritance tax law became effective in 1893, and applied to collateral successions or inheritances. 90 Ohio Laws 14. Legislative experimentation and litigation led to the inheritance tax law of 1919 which taxed direct as well as collateral inheritances. 108 Ohio Laws 561. Meanwhile, in 1912, the people had adopted OHIO CONST., art. XII, § 7 which provides:

Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.

<sup>2</sup> An estate tax is a tax upon the transmission of property from a deceased person, and is levied upon the total taxable estate. An inheritance tax, on the other hand, is a tax upon the right to succeed to property by reason of death, and is levied upon the individual shares of the estate beneficiaries. For a discussion of the advantages of the estate tax as against the inheritance tax, see SCHULTZ, *THE TAXATION OF INHERITANCE*, ch. 13 (1926).

<sup>3</sup> Amended Substitute Senate Bill No. 326 (1967); OHIO REV. CODE ANN. §§ 5731.01-.51 (Page Supp. 1967).

<sup>4</sup> OHIO REV. CODE ANN. old ch. 5731 (Page Supp. 1967).

<sup>5</sup> Amended Substitute Senate Bill No. 326 § 3 (1967), OHIO REV. CODE ANN. ch. 5731 (Page Supp. 1967).

<sup>6</sup> INT. REV. CODE of 1954, §§ 2001-2209.

However, the various elements of the formula are technical and complex in nature, and must be understood in the light of both policy and precedent.

### I. GROSS ESTATE

The new law provides that the value of the taxable estate shall be determined by deducting from the value of the gross estate the exemptions and deductions provided for in sections 5731.15 to 5731.17, inclusive, of the Revised Code.<sup>7</sup> The gross estate itself is the subject matter of eleven separate sections of the statute,<sup>8</sup> and includes not only various property interests of the decedent at the time of death but also certain property interests disposed of by the decedent during his lifetime.

#### A. *Interests of the Decedent at Death*

##### 1. Property Owned

The gross estate includes the value of all property, to the extent of the interest therein of the decedent on the date of his death.<sup>9</sup> This includes "the value, on the date of the decedent's death, of all property, real or personal, tangible or intangible, wherever situated, except real property situated and tangible personal property having an actual situs outside of [Ohio]."<sup>10</sup> Apart from the situs exceptions, coverage is the same as that of the federal estate tax.<sup>11</sup>

Special statutory rules are provided in respect of the transfer of intangible personal property from a person not legally domiciled in Ohio at the time of his death, whether he was the legal or beneficial owner of such property, and whether or not such property was held for him in this state or elsewhere by another, in trust or otherwise. The first rule is that no tax may be imposed unless such intangibles were employed by the non-resident decedent in carrying on business within this state. The second rule is that no tax may be imposed in any case where reciprocal exemption laws are in effect at the time of the non-resident decedent's death.<sup>12</sup>

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<sup>7</sup> OHIO REV. CODE ANN. § 5731.14 (Page Supp. 1967).

<sup>8</sup> OHIO REV. CODE ANN. §§ 5731.03-.13 (Page Supp. 1967).

<sup>9</sup> OHIO REV. CODE ANN. § 5731.03 (Page Supp. 1967).

<sup>10</sup> OHIO REV. CODE ANN. § 5731.01(A) (Page Supp. 1967).

<sup>11</sup> INT. REV. CODE OF 1954, §§ 2031(a), 2033; Treas. Reg. § 20.2033-1 (1963). For a discussion of these includible property interests, see C. LOWNDES & R. KRAMER, *FEDERAL ESTATE AND GIFT TAXES*, ch. 4 (1962).

<sup>12</sup> OHIO REV. CODE ANN. § 5731.34 (Page Supp. 1967).

## 2. Dower and Curtesy Interests

The gross estate includes, "the value of all property, to the extent of any interest therein of the surviving spouse, existing on the date of the decedent's death as dower or curtesy or by virtue of a statute creating an estate in lieu of dower or curtesy."<sup>13</sup> The language of this provision is identical with that of the federal estate tax act.<sup>14</sup>

## 3. Survivorship Annuities

The gross estate includes "the value of an annuity or other payment receivable by a beneficiary by reason of surviving the decedent under any form of contract or agreement," with certain exceptions.<sup>15</sup> Such an annuity is includible if, "under [the] contract or agreement, an annuity or similar payment was payable to the decedent or the decedent possessed the right to receive [the] annuity or payment, either alone or in conjunction with another, for his life, or for any period not ascertainable without reference to his death, or for any period which does not in fact end before his death."<sup>16</sup>

It is provided, however, that the gross estate shall include only such part of the value of the annuity or other payment receivable under the contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. "Any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement, whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit sharing plan, [is] considered to be contributed by the decedent if made by reason of his employment."<sup>17</sup> Moreover, as provided in the former law,<sup>18</sup> the otherwise includible portion of the annuity or other payment receivable under the contract or agreement must be further reduced by two thousand dollars if the annu-

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<sup>13</sup> OHIO REV. CODE ANN. § 5731.04 (Page Supp. 1967). This provision undoubtedly is precautionary in nature. Some of the earlier inheritance tax acts had been held inapplicable to dower or curtesy interests because no new estate was created in the surviving spouse at the date of death.

<sup>14</sup> INT. REV. CODE OF 1954, § 2034; Treas. Reg. § 20.2034-1 (1958).

<sup>15</sup> The exceptions are, "as provided in [OHIO REV. CODE ANN.] . . . §§ 145.56, 3307.71, and 3309.66, and as insurance under policies on the life of the decedent or pensions or annuities accruing to any person under the federal civil service retirement act. . . ." OHIO REV. CODE ANN. § 5731.09(A) (Page Supp. 1967).

<sup>16</sup> OHIO REV. CODE ANN. § 5731.09(A) (Page Supp. 1967).

<sup>17</sup> OHIO REV. CODE ANN. § 5731.09(B) (Page Supp. 1967).

<sup>18</sup> OHIO REV. CODE ANN. § 5731.06 (Page 1953) Repealed.

ity or other payment is payable by reason of the death of a participant in an "employee death benefit plan."<sup>19</sup> This is defined to mean "any plan, fund, or program, either funded or unfunded, which is established by any person, firm, or corporation to provide the beneficiaries of a participating employee with benefits payable upon the death of such employee."<sup>20</sup>

The provision as to survivorship annuities is substantially the same as that of the federal estate tax.<sup>21</sup> However, although the federal law does not contain the two thousand dollar exemption, it does exempt certain "qualified plans,"<sup>22</sup> and to this extent is more liberal than the new Ohio law.

#### 4. Joint and Survivorship Property

The gross estate includes the value of all property to the extent of the interest therein held by the decedent and any person jointly and with rights of survivorship. Such property is included except to the extent of such part as originally belonged to the survivor and had not been acquired from the decedent for less than an adequate and full consideration in money or money's worth.<sup>23</sup> Where the joint owners are husband and wife, only one-half of the value of the property is includible, as under the former law. When the survivorship property has been acquired by the joint owners by gift, bequest, devise, or inheritance, and their interests are not otherwise specified or fixed by law, the amount includible is that fractional part of the property determined by dividing the value of the property by the number of joint owners.<sup>24</sup>

The federal estate tax law does not contain the half and half provision as to husband and wife; otherwise the provisions of the federal and Ohio statutes are parallel.<sup>25</sup>

The corresponding survivorship provisions of the old Ohio inheritance tax law are somewhat ambiguous,<sup>26</sup> but there are a number of interpretative decisions.<sup>27</sup>

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<sup>19</sup> OHIO REV. CODE ANN. § 5731.09(B) (Page Supp. 1967).

<sup>20</sup> OHIO REV. CODE ANN. § 5731.09(B) (Page Supp. 1967).

<sup>21</sup> INT. REV. CODE OF 1954, § 2039(a) and (b); Treas. Reg. § 20.2039-1 (1958).

<sup>22</sup> INT. REV. CODE OF 1954, § 2039(c); Treas. Reg. § 20.2039-2 (1963).

<sup>23</sup> OHIO REV. CODE ANN. § 5731.10(A) (Page Supp. 1967).

<sup>24</sup> OHIO REV. CODE ANN. § 5731.10(B) (Page Supp. 1967).

<sup>25</sup> INT. REV. CODE OF 1954, § 2040; Treas. Reg. § 20.2040-1 (1958). *See in particular* (c) *Examples*.

<sup>26</sup> OHIO REV. CODE ANN. § 5731.02(E) (Page 1953) Repealed.

<sup>27</sup> *E.g., In re Estate of Evans*, 173 Ohio St. 137, 180 N.E.2d 827 (1962); *Rohrbacker*

### 5. General Powers of Appointment

The gross estate includes the value of all property to the extent of any interest as to which the decedent possessed at death a general power of appointment,<sup>28</sup> or as to which he had at any time exercised or released such a power by a disposition of such nature that, if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under Revised Code sections 5731.05 to 5731.08, inclusive.<sup>29</sup> A disclaimer or renunciation of such a power of appointment is not deemed to be an exercise or release of such power.<sup>30</sup> The phrase "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate.<sup>31</sup>

Although the foregoing provisions are patterned after the federal estate tax law,<sup>32</sup> there are some significant differences. The federal statute distinguishes between powers of appointment created on or before October 21, 1942,<sup>33</sup> and powers created after October 21, 1942.<sup>34</sup> Moreover, the federal statute excludes from the definition of a "general" power a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support or maintenance of the decedent.<sup>35</sup>

Likewise, there are some significant differences between the new Ohio estate tax and the old inheritance tax laws in this area. The latter imposed the tax in the estate of the donee of the power of appointment whether or not it was "general,"<sup>36</sup> but if the donee of such power was a nonresident of Ohio, the property subject to the power was taxable in the donor's estate.<sup>37</sup>

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v. Citizens Bldg. Ass'n Co., 138 Ohio St. 273, 34 N.E.2d 751 (1941); Tax Comm'n v. Hutchison, 120 Ohio St. 361, 166 N.E. 352 (1929); Cleveland Trust Co. v. Scobie, 114 Ohio St. 241, 151 N.E. 373 (1926).

<sup>28</sup> OHIO REV. CODE ANN. § 5731.11(A) (Page Supp. 1967).

<sup>29</sup> See text accompanying notes 42-66 *infra*.

<sup>30</sup> OHIO REV. CODE ANN. § 5731.11(A) (Page Supp. 1967).

<sup>31</sup> OHIO REV. CODE ANN. § 5731.11(B) (Page Supp. 1967).

<sup>32</sup> INT. REV. CODE OF 1954, § 2041; Treas. Reg. § 20.2041-1 (1961).

<sup>33</sup> INT. REV. CODE OF 1954, § 2041(a)(1); Treas. Reg. § 20.2041-2 (1958).

<sup>34</sup> INT. REV. CODE OF 1954, § 2041(a)(2); Treas. Reg. § 20.2041-3 (1958).

<sup>35</sup> INT. REV. CODE OF 1954, § 2041(b); Treas. Reg. § 20.2041-1(c) (1961).

<sup>36</sup> OHIO REV. CODE ANN. § 5731.02(D) (Page 1953) Repealed. An interesting recent interpretation of this statute is found in *Schneider v. Laffoon*, 4 Ohio St. 2d 89, 212 N.E.2d 801 (1965).

<sup>37</sup> OHIO REV. CODE ANN. § 5731.05 (Page 1953) Repealed.

## 6. Life Insurance

The gross estate includes amounts receivable by the decedent's estate as insurance under policies on the life of the decedent. Expressly excluded, however, is any amount receivable as insurance on the decedent's life by beneficiaries other than the decedent's estate, whether paid directly to such beneficiaries or to a testamentary or inter vivos trust for their benefit.<sup>38</sup> This exclusion, although in conformity with the prior statute,<sup>39</sup> constitutes a substantial departure from the federal estate tax. The latter expressly draws into the gross estate insurance on the life of a decedent receivable by his estate, and also by all other beneficiaries if the decedent possessed at his death any of the incidents of ownership, such as the power to assign the policy, to pledge the policy for a loan, to change the beneficiary, *et cetera*.<sup>40</sup>

As to includible life insurance, the new Ohio statute provides for a deduction of two thousand dollars if such insurance is payable by reason of the death of a participant in an employer death benefit plan. This is defined to mean "any plan, fund, or program either funded or unfunded which is established . . . to provide the beneficiaries of a participating employee with benefits payable upon the death of such employee."<sup>41</sup>

### B. *Inter Vivos Transfers*

Property interests owned by the decedent at death are not the only property includible in the gross estate. The new Ohio estate tax, like the federal estate tax, provides that under certain circumstances interests in property transferred during life shall also be included in the gross estate of the transferor. These inter vivos transfers are (a) transfers in contemplation of death,<sup>42</sup> (b) transfers with

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<sup>38</sup> OHIO REV. CODE ANN. § 5731.12(A) (Page Supp. 1967).

<sup>39</sup> OHIO REV. CODE ANN. § 5731.06 (Page 1953) Repealed. Several significant decisions in this area are *In re Estate of Chadwick*, 167 Ohio St. 373, 149 N.E.2d 5 (1958); *Bowman v. Tax Comm.*, 135 Ohio St. 295, 20 N.E.2d 916 (1939); *In re Estate of Rothenbuecher*, 76 Ohio App. 425, 64 N.E.2d 680 (1945).

<sup>40</sup> INT. REV. CODE OF 1954, § 2042; Treas. Reg. § 20.2042-1 (1958). But note that the term "incidents of ownership" includes a reversionary interest only if the value of such interest exceeded 5% of the value of the policy immediately before the death of the decedent.

<sup>41</sup> OHIO REV. CODE ANN. § 5731.12(B) (Page Supp. 1967). It should be noted that the aggregate amount exempted as insurance under this section and as survivorship annuities under OHIO REV. CODE ANN. § 5731.09(B) (Page Supp. 1967) is two thousand dollars in the case of each decedent.

<sup>42</sup> OHIO REV. CODE ANN. § 5731.05 (Page Supp. 1967).

retained life interests,<sup>43</sup> (c) transfers dependent upon survivorship,<sup>44</sup> and (d) revocable transfers.<sup>45</sup> In each case the transfer is includible if it did not constitute a bona fide sale for an adequate and full consideration in money or money's worth. If the transfer was made for a consideration, but did not constitute a bona fide sale for an adequate or full consideration, there is to be included in the gross estate only the excess of the fair market value of the property at the time of death over the value of the consideration received therefor by the decedent.<sup>46</sup>

The new statute also provides that a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."<sup>47</sup> The foregoing provisions in respect of consideration are the same as those embodied in the federal estate tax law.<sup>48</sup>

The statutory policy underlying the includibility in the gross estate of certain inter vivos transfers is that they are essentially testamentary in nature and, in the language of the old Ohio inheritance tax law, are often intended to take effect in possession or enjoyment at or after the death of the transferor.<sup>49</sup> It will be found that some of the inter vivos transfers, now to be analyzed, are overlapping in application.

### 1. Transfers in Contemplation of Death

The gross estate includes the value of all property to the extent of any interest therein of which the decedent at any time has made a gratuitous transfer,<sup>50</sup> by trust or otherwise, in contemplation of his death.<sup>51</sup> A transfer made within a period of three years prior

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<sup>43</sup> OHIO REV. CODE ANN. § 5731.06 (Page Supp. 1967).

<sup>44</sup> OHIO REV. CODE ANN. § 5731.07 (Page Supp. 1967).

<sup>45</sup> OHIO REV. CODE ANN. § 5731.08 (Page Supp. 1967).

<sup>46</sup> OHIO REV. CODE ANN. § 5731.13(A) (Page Supp. 1967). This provision is likewise applicable to those powers of appointment described in OHIO REV. CODE ANN., § 5731.11 (Page Supp. 1967) which are exercised or released for a consideration but not for an adequate and full consideration in money or money's worth. See text accompanying notes 28-37 *supra*.

<sup>47</sup> OHIO REV. CODE ANN. § 5731.13(B) (Page Supp. 1967).

<sup>48</sup> INT. REV. CODE OF 1954, § 2043(a), (b); Treas. Reg. § 20.2043-1(a), (b) (1958).

<sup>49</sup> OHIO REV. CODE ANN. § 5731.02(C)(2) (Page 1953) Repealed.

<sup>50</sup> This phrase as used herein refers to a transfer which does not constitute a bona fide sale for an adequate and full consideration in money or money's worth.

<sup>51</sup> OHIO REV. CODE ANN. § 5731.05(A) (Page Supp. 1967).

to the decedent's death is deemed to have been made in contemplation of death, unless the contrary is shown; but no transfer made before such three-year period shall be treated as having been made in contemplation of death.<sup>52</sup> These rules are identical with those embodied in the federal estate tax.<sup>53</sup>

However, the new statute is a marked departure from prior Ohio law. Under the inheritance tax statute, gratuitous transfers in contemplation of death were taxable whenever made, and transfers within two years of the decedent's death were presumed to be taxable.<sup>54</sup> Moreover, under the old law, the phrase "contemplation of death" was defined to mean "that expectation of death which actuates the mind of a person on the execution of his will."<sup>55</sup> The new law contains no definition of the phrase and, since it parallels the federal statute, administrative and judicial interpretation of the latter may be persuasive.<sup>56</sup>

## 2. Transfers with Retained Interests

The gross estate includes the value of all property to the extent of any interest therein of which the decedent at any time has made

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<sup>52</sup> OHIO REV. CODE ANN. § 5731.05(B) (Page Supp. 1967).

<sup>53</sup> INT. REV. CODE OF 1954 § 2035(a), (b); Treas. Reg. § 20.2035-1(a) (1958).

<sup>54</sup> OHIO REV. CODE ANN. §§ 5731.02(C)(1) and 5731.04 (Page 1953) Repealed. *See In re Walker's Estate*, 161 Ohio St. 564, 120 N.E.2d 432 (1954); *In re Robinson's Estate*, 145 Ohio St. 55, 60 N.E.2d 615 (1945).

<sup>55</sup> OHIO REV. CODE ANN. § 5731.01(E), (1953) Repealed. In *Tax Comm'n v. Parker*, 117 Ohio St. 215, 158 N.E. 89 (1927), the Ohio Supreme Court held that the controlling fact in determining whether a transferor made the transfer of property in contemplation of death is whether the purpose of the transferor was to distribute or partially distribute his estate, or was simply to do an act of generosity or kindness. *See also Hildebrandt's Estate v. Dep't of Taxation*, 86 Ohio App. 246, 86 N.E.2d 802 (1949); *Schaefer v. Dep't of Taxation*, 75 Ohio App. 533, 62 N.E.2d 374 (1945); *In re Bender's Estate*, 60 Ohio App. 107, 19 N.E.2d 781 (1938).

<sup>56</sup> Treas. Reg. § 20.2035-1(C) (1958) states as follows:

The phrase 'in contemplation of death,' as used in this section, does not have reference to that general expectation of death such as all persons entertain. On the other hand, its meaning is not restricted to an apprehension that death is imminent or near. A transfer 'in contemplation of death' is a disposition of property prompted by the thought of death (although it need not be solely so prompted). A transfer is prompted by the thought of death if (1) made with the purpose of avoiding death taxes, (2) made as a substitute for a testamentary disposition of the property, or (3) made for any other motive associated with death. The bodily and mental condition of the decedent and all other attendant facts and circumstances are to be scrutinized in order to determine whether or not such thought prompted the disposition.

*See also United States v. Wells*, 283 U.S. 102 (1931), with which the foregoing regulation conforms.



a gratuitous transfer, by trust or otherwise, under which he has retained certain property interests. The retained interests include (a) the possession or enjoyment of, or the right to the income from, the property, or (b) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom. Such interests are included only if retained by the decedent (a) for his life, (b) for any period not ascertainable without reference to his death, or (c) for any period which does not in fact end before his death.<sup>57</sup>

These provisions are identical with those of the federal estate tax.<sup>58</sup> However, identical statutory language is not to be found in the older Ohio inheritance tax law. Instead, inter vivos transfers of this type and those hereafter discussed were embraced within the statutory category of transfers intended to take effect in possession or enjoyment at or after death.<sup>59</sup>

### 3. Transfers Dependent upon Survivorship

The gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time made a gratuitous transfer, by trust or otherwise, whereby possession or enjoyment of the property can be obtained only by surviving the decedent.<sup>60</sup> As an additional requirement, the decedent must have expressly retained a reversionary interest in excess of five per cent of the value of the property.<sup>61</sup> The term "reversionary interest" is defined to include "a possibility that property transferred by the decedent may return to him or to his estate or become subject to a power of disposition by him. . . ."<sup>62</sup> The value of the reversionary interest must be determined as of the moment immediately before the death of the decedent by the usual methods of valuation, including the use of tables of mortality and actuarial principles, under rules and regulations prescribed by the Tax Commissioner. The

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<sup>57</sup> OHIO REV. CODE ANN. § 5731.06 (Page Supp. 1967)

<sup>58</sup> INT. REV. CODE OF 1954, § 2036; Treas. Reg. § 20.2036-1 (1960). For meaning of terms, see in particular § 20.2036-1(b).

<sup>59</sup> OHIO REV. CODE ANN. § 5731.02(C)(2) (Page 1953) Repealed. See *In re Estate of Pfeifle*, 10 Ohio St. 2d 197, 226 N.E.2d 719 (1967); *In re Hazleton's Estate*, 148 Ohio St. 127, 73 N.E.2d 799 (1947); *In re Thompson's Estate*, 147 Ohio St. 119, 68 N.E.2d 71 (1946); *Sherman v. Tax Comm'n.*, 125 Ohio St. 367, 181 N.E. 539 (1932).

<sup>60</sup> OHIO REV. CODE ANN. § 5731.07(A)(1) (Page Supp. 1967).

<sup>61</sup> OHIO REV. CODE ANN. § 5731.07(A)(2) (Page Supp. 1967).

<sup>62</sup> OHIO REV. CODE ANN. § 5731.07(B) (Page Supp. 1967).

foregoing statutory rules are substantially the same as those embodied in the federal estate tax law.<sup>63</sup>

#### 4. Revocable Transfers

Finally, the gross estate includes the value of all property to the extent of any interest therein of which the decedent has made a gratuitous transfer, by trust or otherwise, where enjoyment of the property was subject on the date of the decedent's death to any change through the exercise of a power to alter, amend, revoke or terminate. The power may be exercisable by the decedent either alone or in conjunction with any other person, and the capacity in which the power is exercisable is inconsequential.<sup>64</sup> This, likewise, parallels the federal estate tax statute, although the latter has some variations between transfers before and after June 22, 1936.<sup>65</sup>

The old Ohio inheritance tax law did not contain this category of includible inter vivos transfers, although they could be reached as transfers intended to take effect in possession or enjoyment at or after death.<sup>66</sup>

#### C. *Valuation of Includible Property*

Under the new Ohio estate tax law, property which is includible in the gross estate must be valued as of the date of the decedent's death.<sup>67</sup> Unlike the federal estate tax law, there is no provision for an alternate valuation date.<sup>68</sup>

The statute specifies that the value of includible property "shall be the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts;" and, further, that "all relevant facts and elements of value as of the valuation date shall be considered in determining such value."<sup>69</sup> This is the familiar "fair market value" test embodied

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<sup>63</sup> INT. REV. CODE OF 1954, § 2037; Treas. Reg. § 20.2037-1 (1958). See especially illustrative examples in (e).

<sup>64</sup> OHIO REV. CODE ANN. § 5731.08 (Page Supp. 1967).

<sup>65</sup> INT. REV. CODE OF 1954, § 2038; Treas. Reg. § 20.2038-1 (1962).

<sup>66</sup> OHIO REV. CODE ANN. § 5731.02(C)(2) (1953) Repealed. See *Sherman v. Tax Comm.*, 125 Ohio St. 367, 181 N.E. 539 (1932).

<sup>67</sup> OHIO REV. CODE ANN. § 5731.01(A) (Page Supp. 1967).

<sup>68</sup> INT. REV. CODE OF 1954, § 2032; Treas. Reg. § 20.2032-1 (1958). If the executor so elects, any property not distributed, sold, exchanged, or otherwise disposed of within one year after the decedent's death is valued as of the date one year after the date of the decedent's death. INT. REV. CODE OF 1954, § 2032(a)(2).

<sup>69</sup> OHIO REV. CODE ANN. § 5731.01(B) (Page Supp. 1967).

in the federal estate tax regulations,<sup>70</sup> and also contained in the Ohio inheritance tax law.<sup>71</sup>

In the case of corporate stock and securities which are not listed on an exchange and which have no ascertainable bid and asked prices, the value must be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange or which are traded actively in the over-the-counter market.<sup>72</sup> This is also the federal rule<sup>73</sup> and, while not specifically included in the old inheritance tax statute, this was generally the result by judicial construction.<sup>74</sup>

The new estate tax statute also embodies the blockage rule,<sup>75</sup> as did the inheritance tax statute.<sup>76</sup> This means that if a valuation of securities is undertaken by reference to market transactions and if the block of securities to be valued is so large in relation to actual sales on existing markets that it could not be liquidated in a reasonable time without depressing the market, the price at which the block could be sold, as such, outside the usual market, as through an underwriter, must be considered in determining the value of such block of securities. The blockage rule is also recognized for federal estate tax purposes.<sup>77</sup>

## II. TAXABLE ESTATE

Having ascertained and evaluated the gross estate, the next step under the new Ohio estate tax law is determination of the taxable

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<sup>70</sup> Treas. Reg. § 20.2031-1(b) (1965).

<sup>71</sup> OHIO REV. CODE ANN. § 5731.01(F) (Page 1953) Repealed. See *In re Estate of Sears*, 172 Ohio St. 443, 178 N.E.2d 240 (1961). The inheritance tax law also contained provisions for the valuation of future and limited estates, remainders, terminated life estates or annuities, and defeasible estates. OHIO REV. CODE ANN., §§ 5731.23, .24, .27, .31 (Page 1953) Repealed.

<sup>72</sup> OHIO REV. CODE ANN. § 5731.01(C) (Page Supp. 1967).

<sup>73</sup> INT. REV. CODE OF 1954, § 2031(b); Treas. Reg. 20.2031-2(f) (1965).

<sup>74</sup> See *In re Estate of Kennedy*, 173 Ohio St. 379, 182 N.E.2d 624 (1962), in which it was held that while a restrictive, fixed price buy-and-sell agreement may be an element in determining actual market value, such agreement is not conclusive as to the valuation of closely held stock.

<sup>75</sup> OHIO REV. CODE ANN. § 5731.01(C) (Page Supp. 1967).

<sup>76</sup> OHIO REV. CODE ANN. § 5731.01(F) (Page Supp. 1967) Repealed. This provision was initially enacted by the Ohio General Assembly to counteract *In re Estate of Sears*, 172 Ohio St. 443, 178 N.E.2d 240 (1961), in which the Ohio Supreme Court refused to accept the blockage rule.

<sup>77</sup> Treas. Reg. § 20.2031-2(d) (1965).

estate. This is accomplished by deducting from the value of the gross estate the exemptions and deductions specified in the statute.<sup>78</sup>

### A. Exemptions

The statute specifies three categories of exemptions. First, an exemption of five thousand dollars is allowable in all estates.<sup>79</sup> Second, the surviving spouse of the decedent is granted an exemption not exceeding twenty thousand dollars for any property included in the gross estate which is or has been transferred to or for the benefit of, and is vested in, the surviving spouse,<sup>80</sup> including the year's allowance<sup>81</sup> and property exempt from administration.<sup>82</sup> Third, a similar exemption is granted to each adult child in the amount of three thousand dollars, and to each minor child in the amount of seven thousand dollars,<sup>83</sup> including the value of property set off<sup>84</sup> and property exempted from administration.<sup>85</sup> For the purpose of computing the exemption where there is a minor child, property which is or has been transferred to or for the benefit of the surviving spouse in excess of the spouse's twenty thousand dollar exemption will be treated as though transferred to or for the benefit of the minor child if the surviving spouse is obligated to support such child.<sup>86</sup>

For the purposes of determining the foregoing exemptions, whenever the interest transferred to the decedent's surviving spouse or child consists of a life estate, estate for years, remainder or other limited interest, the valuation of such interest must be determined by the usual methods of valuation, including the use of tables of mortality and actuarial principles, under rules and regulations prescribed by the Tax Commissioner.<sup>87</sup>

It should be noted that the foregoing family exemptions are

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78 OHIO REV. CODE ANN. § 5731.14 (Page Supp. 1967).

79 OHIO REV. CODE ANN. § 5731.15(A)(1) (Page Supp. 1967).

80 OHIO REV. CODE ANN. § 5731.15(A)(2) (Page Supp. 1967).

81 OHIO REV. CODE ANN. § 2117.20 (Page 1968).

82 OHIO REV. CODE ANN. § 2115.13 (Page 1968).

83 OHIO REV. CODE ANN. § 5731.15(A)(3) (Page Supp. 1967). Adult children are those twenty-one years of age or older at the death of the decedent, and minor children are those under twenty-one at such time.

84 OHIO REV. CODE ANN. § 2117.20 (Page 1968).

85 OHIO REV. CODE ANN. § 2115.13 (Page 1968).

86 OHIO REV. CODE ANN. § 5731.15(A)(3) (Page Supp. 1967).

87 OHIO REV. CODE ANN. § 5731.15(B) (Page Supp. 1967).

different from those embodied in the former inheritance tax act<sup>88</sup> and from the federal estate tax exemption.<sup>89</sup>

### B. *Deductions for Expenses and Claims*

The new statute specifies the following categories of deductions:

- (1) For funeral expenses;
- (2) For administration expenses, excluding the value of any property set off and allowed to a widow or children . . .<sup>90</sup> and the value of any property exempted from administration, . . .<sup>91</sup> to the extent that such expenses have been or will be actually paid;
- (3) For claims against the estate which are outstanding and unpaid as of the date of decedent's death;
- (4) For unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate.<sup>92</sup>

It is also provided that there shall be deducted certain expenses incurred in administering property not subject to claims which is included in the gross estate.<sup>93</sup> The deduction for claims against the estate, "unpaid mortgages, or any indebtedness, when founded on a promise or agreement, is limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. . . ."<sup>94</sup> However, a promise or agreement to make a contribution or gift to or for the use of specified charitable and other donees provides a deduction to the extent that it would be allowable if the promise or agreement constituted a bequest.<sup>95</sup> Further, it should be noted that there are no deductions for income taxes on income received after the decedent's death, or property taxes not accrued before his death, or for estate, succession, legacy or inheritance taxes.<sup>96</sup>

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<sup>88</sup> See OHIO REV. CODE ANN. § 5731.09 (Page 1953) Repealed.

<sup>89</sup> For federal estate tax purposes there is a standard exemption of sixty thousand dollars. INT. REV. CODE OF 1954, § 2052.

<sup>90</sup> See OHIO REV. CODE ANN. § 2117.20 (Page 1968).

<sup>91</sup> See OHIO REV. CODE ANN. § 2115.13 (Page 1968).

<sup>92</sup> OHIO REV. CODE ANN. § 5731.16(A) (Page Supp. 1967).

<sup>93</sup> OHIO REV. CODE ANN. § 5731.16(B) (Page Supp. 1967).

<sup>94</sup> OHIO REV. CODE ANN. § 5731.16(C) (Page Supp. 1967).

<sup>95</sup> OHIO REV. CODE ANN. §§ 5731.16(C), 5731.17 (Page Supp. 1967).

<sup>96</sup> OHIO REV. CODE ANN. § 5731.16(D) (Page Supp. 1967).

Generally, it may be stated that the deductions for the above expenses, claims and indebtedness are substantially the same as those allowable under the federal estate tax.<sup>97</sup>

### C. *Deductions for Public, Charitable and Similar Uses*

A separate section of the new statute<sup>98</sup> authorizes deduction from the gross estate of all bequests, legacies, devises, or transfers for the following:

(1) To or for the use of federal, state, or local governments for exclusively public purposes;<sup>99</sup>

(2) To or for the use of corporations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;<sup>100</sup>

(3) To or for the use of a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only for the uses and subject to the limitations mentioned in (2) above;<sup>101</sup>

(4) To or for the use of specified veterans' organizations, no part of the net earnings of which inures to the benefit of any private shareholder or individual.<sup>102</sup>

The foregoing deductions are also applicable as to any interest which falls into a deductible bequest, legacy, devise or transfer as the result of an irrevocable disclaimer which is made before the date prescribed for the filing of the estate tax return.<sup>103</sup>

If any estate or inheritance taxes, either by the terms of the will or by the law of jurisdiction, are payable out of the bequests, legacies, or devises otherwise deductible, the amount deductible is the amount of such bequests, legacies, or devises unreduced by the amount of such taxes.<sup>104</sup> As of the date of the decedent's death, if any otherwise deductible bequest, legacy, devise or transfer is de-

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<sup>97</sup> INT. REV. CODE OF 1954, § 2053; Treas. Reg. §§ 20.2053-1-20.2053-8 (1958).

<sup>98</sup> OHIO REV. CODE ANN. § 5731.17(A) (Page Supp. 1967).

<sup>99</sup> OHIO REV. CODE ANN. § 5731.17(A)(1) (Page Supp. 1967).

<sup>100</sup> OHIO REV. CODE ANN. § 5731.17(A)(2) (Page Supp. 1967). Subject to the proviso that no part of the net earnings of such corporation inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.

<sup>101</sup> OHIO REV. CODE ANN. § 5731.17(A)(3) (Page Supp. 1967).

<sup>102</sup> OHIO REV. CODE ANN. § 5731.17(A)(4) (Page Supp. 1967).

<sup>103</sup> OHIO REV. CODE ANN. § 5731.17(A) (Page Supp. 1967).

<sup>104</sup> OHIO REV. CODE ANN. § 5731.17(A) (Page Supp. 1967). The rule is otherwise under the federal estate tax law, with the result that complicated computations are involved. Treas. Reg. § 20.2055-3 (1958).

pendent upon the performance of some act or the happening of a precedent event to become effective, no deduction is allowable unless the possibility that such transfer will not become effective is so remote as to be negligible.<sup>105</sup> This, likewise, is the federal rule.<sup>106</sup>

Finally, the statute provides that the present value of a remainder, deferred payment or other limited interest shall be computed through use of the usual methods of valuation, including reference to tables of mortality and actuarial principles, and under rules and regulations prescribed by the Tax Commissioner.<sup>107</sup>

The deductions for public, charitable and similar uses allowable under the new estate tax law are much broader than those prescribed in the inheritance tax law.<sup>108</sup> Since they are substantially the same as those allowable under the federal estate tax law,<sup>109</sup> difficulties in estate planning, drafting and administration are certain to be minimized.

Conspicuously missing in the new law is the marital deduction, which is one of the important features of the federal estate tax structure. Under the Internal Revenue Code, there may be deducted from the gross estate an amount equal to the value of the property passing to the surviving spouse, provided that such property does not constitute a terminable interest, and provided also that such deductible property value does not exceed fifty per cent of the decedent's adjusted gross estate.<sup>110</sup> Only the twenty thousand dollar exemption in the new law<sup>111</sup> is comparable in nature to the marital deduction, and in larger estates it only approaches it remotely.

### III. TAX COMPUTATIONS

Two separate taxes are levied by the new law upon the transfer of the taxable estate, one of which is described herein as the basic tax,<sup>112</sup> and the other of which is specifically referred to in the statute as the additional tax.<sup>113</sup> There are separate provisions for the application of these taxes as between residents and nonresidents of Ohio.

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<sup>105</sup> OHIO REV. CODE ANN. § 5731.17(B) (Page Supp. 1967).

<sup>106</sup> Treas. Reg. § 20.2055-2(b) (1958).

<sup>107</sup> OHIO REV. CODE ANN. § 5731.17(B) (Page Supp. 1967).

<sup>108</sup> OHIO REV. CODE ANN. § 5731.09 (Page 1953) Repealed. Decisions interpreting and applying this statute are legion and most may be readily ascertained by consulting the Code annotations.

<sup>109</sup> INT. REV. CODE OF 1954, § 2055; Treas. Reg. §§ 20.2055-1-20.2055-4 (1958).

<sup>110</sup> INT. REV. CODE OF 1954, § 2056; Treas. Reg. §§ 20.2056(a)-1-20.2056(e)-3 (1958).

<sup>111</sup> OHIO REV. CODE ANN. § 5731.15(A)(2) (Page Supp. 1967).

<sup>112</sup> OHIO REV. CODE ANN. §§ 5731.02, 5731.19(A),(B) (Page Supp. 1967).

<sup>113</sup> OHIO REV. CODE ANN. §§ 5731.18, 5731.19(C) (Page Supp. 1967).

### A. *Basic Tax—Residents*

The basic tax is levied on the transfer of the taxable estate of every person dying on or after July 1, 1968 who, at the time of his death, was a resident of Ohio. The tax rates range from two per cent to seven per cent, and are embodied in a statutory tax table which contains six brackets.<sup>114</sup> While the rates under the old inheritance tax law range from one per cent to eleven per cent,<sup>115</sup> it should be kept in mind that the new estate tax rates are levied on the entire taxable estate and not on each beneficiary's separate interest.

### B. *Basic Tax—Nonresidents*

The basic tax is also levied upon the transfer of a portion of the taxable estate of every person dying on or after July 1, 1968 who, at the time of his death, was not a resident of Ohio. The portion to which the tax is applicable consists of real property situated in this state, tangible personal property having an actual situs in this state, and intangible personal property employed in carrying on a business within this state unless otherwise exempted.<sup>116</sup>

The amount of the tax is determined by a two-step formula. First, the amount of tax which would be payable if the decedent had died a resident with all his property located within the state must be determined.<sup>117</sup> Second, the tax so determined must be multiplied by a fraction the numerator of which is the gross estate value of the real property situated and the tangible personalty having a situs in this state, and also the intangible property used in business within this state, and the denominator of which is the

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If the taxable estate is:

Not over \$40,000

Over \$40,000 but not  
over \$100,000

Over \$100,000 but not  
over \$200,000

Over \$200,000 but not  
over \$300,000

Over \$300,000 but not  
over \$500,000

Over \$500,000

The tax shall be:

2% of the taxable estate

\$800 plus 3% of the  
excess over \$40,000

\$2,600 plus 4% of the  
excess over \$100,000

\$6,600 plus 5% of the  
excess over \$200,000

\$11,600 plus 6% of the  
excess over \$300,000

\$23,600 plus 7% of the  
excess over \$500,000.

OHIO REV. CODE ANN. § 5731.02 (Page Supp. 1967).

115 OHIO REV. CODE ANN. § 5731.12 (Page 1953) Repealed.

116 OHIO REV. CODE ANN. §§ 5731.19(A), 5731.34 (Page Supp. 1967).

117 OHIO REV. CODE ANN. § 5731.19(B)(1) (Page Supp. 1967).



value of the gross estate wherever situated.<sup>118</sup> The product constitutes the amount of the basic tax payable by the estate of the non-resident.

### C. *Additional Tax*

The additional tax, like the basic tax, is levied upon the transfer of the taxable estate of every person dying on or after July 1, 1968, who, at the time of his death, was a resident of Ohio.<sup>119</sup> The tax rates range up to sixteen percent, and are embodied in a statutory tax table which contains twenty-one brackets.<sup>120</sup> The purpose of the additional tax is to obtain for the state the difference between the basic tax and the federal estate tax state death tax credit,<sup>121</sup> as was the additional tax levied under the old inheritance tax law.<sup>122</sup> It is provided that the rules for determining the amount of the taxable estate upon which the additional tax is levied shall, insofar as applicable, be the statutes, rulings and regulations applied by the Commissioner of Internal Revenue in determining the taxable estate for federal estate tax purposes.<sup>123</sup> It is also provided that the additional tax shall be credited with the amount of the basic tax, and with the amount of any death taxes actually paid to any state or territory of the United States or the District of Columbia on any property included in the gross estate.<sup>124</sup>

The additional tax is also levied upon a portion of the taxable estate of nonresidents, computed in substantially the same manner as the basic tax on estates of non-residents.<sup>125</sup>

## IV. PROCEDURAL ASPECTS

### A. *Estimate of Gross Estate*

Within sixty days of the date of decedent's death, a notice containing an estimate of the property in the decedent's gross estate must be filed with the Tax Commissioner by the person or corpora-

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<sup>118</sup> OHIO REV. CODE ANN. § 5731.19(B)(2) (Page Supp. 1967).

<sup>119</sup> OHIO REV. CODE ANN. § 5731.18(A) (Page Supp. 1967).

<sup>120</sup> *Id.*

<sup>121</sup> INT. REV. CODE OF 1954, § 2011(a)(b)

<sup>122</sup> OHIO REV. CODE ANN. § 5731.13 (1953) Repealed. In fact this additional tax was levied as an estate tax.

<sup>123</sup> OHIO REV. CODE ANN. § 5731.18(B) (Page Supp. 1967).

<sup>124</sup> OHIO REV. CODE ANN. § 5731.18(C) (Page Supp. 1967).

<sup>125</sup> OHIO REV. CODE ANN. § 5731.19(C) (Page Supp. 1967). See text accompanying notes 116-118 *supra*.

tion required to file the estate tax return.<sup>126</sup> If this notice is not filed within the time prescribed, a penalty not to exceed five hundred dollars may be added to the tax by the Tax Commissioner, unless it is shown that the failure to comply is due to reasonable cause.<sup>127</sup>

### B. *Estate Tax Return*

Within fifteen months after the date of decedent's death, an estate tax return must be filed by the executor or administrator or, if none has been appointed, by the person or corporation in possession of the property subject to the estate tax. The return must be filed in duplicate with the probate court\* of the county in which the decedent's estate is administered. If no administration is being had, the return must be filed with the probate court of the county in which the decedent died a resident or, if the decedent died a resident outside this state, in the county in which the property subject to tax is located. The return must thereafter be forwarded by the probate court to the Tax Commissioner, who is authorized to extend the time for filing. Moreover, the probate court is required to notify the county auditor of the receipt of the return, and the auditor is required to certify a charge to the county treasurer who, in turn, is required to collect the tax so charged.<sup>128</sup> If the person or corporation required to file the return fails to do so within fifteen months of decedent's death, the Tax Commissioner is authorized to determine the estate tax, and to give specified notice thereof.<sup>129</sup>

If the estate tax return is not filed within the time prescribed therefor, a penalty not to exceed one thousand dollars may be added to the tax by the Tax Commissioner, unless it is shown that failure to comply is due to reasonable cause. In the cases of failure to file the return or underpayment of tax due to fraud, the Tax Commissioner may add a penalty not exceeding ten thousand dollars.<sup>130</sup>

The foregoing requirements relate to the so-called basic tax. If an additional tax is due, an additional tax return must be filed within sixty days after the date of the final determination of the federal estate tax liability.<sup>131</sup>

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<sup>126</sup> OHIO REV. CODE ANN. § 5731.20 (Page Supp. 1967).

<sup>127</sup> OHIO REV. CODE ANN. § 5731.22 (Page Supp. 1967).

\* Now the probate division of the common pleas court. See Milligan and Pohlman article p. 840 this issue—Ed.

<sup>128</sup> OHIO REV. CODE ANN. § 5731.21(A) (Page Supp. 1967).

<sup>129</sup> OHIO REV. CODE ANN. § 5731.21(B) (Page Supp. 1967).

<sup>130</sup> OHIO REV. CODE ANN. § 5731.22 (Page Supp. 1967).

<sup>131</sup> OHIO REV. CODE ANN. § 5731.24 (Page Supp. 1967).

### C. *Payment of Tax*

The basic tax is payable at the expiration of fifteen months from the date of the decedent's death. Payment is to be made to the treasurer of the county in which the return is required to be filed. If any amount of such tax is not paid within the time specified, interest at six per cent per annum must be paid for the period from the due date to the date paid. Interest at the same rate accrues on any deficiency determination, and is also payable to the estate on all overpayments of tax.<sup>132</sup> The additional tax must be paid with the return and is to be charged and collected in the same manner as the basic tax, except that no interest accrues until sixty days after the date of the final determination of the federal estate tax liability.<sup>133</sup>

If the basic tax is paid within six months after the decedent's death, a discount of three per cent is allowed. If the tax is not paid within six months, the discount rate is reduced by subtracting one-half of one per cent each month until the discount is exhausted. The gross amount, before discount, of the payment is to be credited against the amount of tax finally determined to be due.<sup>134</sup>

If the value of a reversionary or remainder interest in property is included in the gross estate, payment of the tax attributable to such interest may be postponed until six months after the termination of the precedent interest or interests in the property. The amount postponed bears interest at the rate of three per cent per annum from the date fixed for payment of the tax. Furthermore, the amount postponed must be secured by a surety bond approved by the Tax Commissioner.<sup>135</sup>

### D. *Administrative Determinations*

Administration of the new Ohio estate tax law is primarily vested in the Tax Commissioner. He is required to determine the correctness of the return with respect to the includibility of property, the fair market value of the assets included in the gross estate, the allowance of exemptions and deductions, and all other matters necessary to determine the correct amount of the tax. He is given full powers of inquiry, and he is authorized to designate employees

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<sup>132</sup> OHIO REV. CODE ANN. § 5731 (Page Supp. 1967).

<sup>133</sup> OHIO REV. CODE ANN. § 5731.24 (Page Supp. 1967).

<sup>134</sup> OHIO REV. CODE ANN. § 5731.23 (Page Supp. 1967).

<sup>135</sup> OHIO REV. CODE ANN. § 5731.25 (Page Supp. 1967).

of the county auditor or of the probate court to assist him as his agents.<sup>136</sup>

The Commissioner is required to give notice of any adjustments which he proposes to make, and to grant hearings thereon in the county in which the return was filed.<sup>137</sup> At or before the time of the hearing, the person filing the return and the Tax Commissioner may agree in writing to have the correctness of the return as to any item determined in accordance with the final determination of such item for federal estate tax purposes.<sup>138</sup>

If the Commissioner finds that the tax return is correct as filed, he is required to issue a certificate of determination of final estate tax liability.<sup>139</sup> If the Commissioner determines a deficiency or refund of tax or penalty, he is required to issue a certificate of determination stating the adjusted amount of the tax due and the amount of any refund, deficiency, or penalty. This certificate must also state whether or not any portion of the tax liability has been reserved for later determination in accordance with federal estate tax determination. The person or corporation required to file the return, or any interested party, is given sixty days from the date of receipt of such certificate within which to file exception to such determination.<sup>140</sup> In the event no exceptions are filed, or if waived in writing, the county auditor must draw his warrant for any refund, payable by the county treasurer, and certify to the county treasurer a charge for any deficiency which shall be collected by the treasurer.<sup>141</sup>

### *E. Exceptions and Appeals*

Written exceptions to the final determination of taxes and the disallowance of refund claims may be filed with the probate court of the county in which the return is required to be filed. Such exceptions may be filed by the person or corporation required to file the return, or by any interested party, within sixty days from receipt of the certificate of determination issued by the Tax Commissioner, and they must state the grounds upon which they are taken. The probate court is thereupon required to fix a time for, and give notice of, a hearing of such exceptions.<sup>142</sup> For this purpose,

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<sup>136</sup> OHIO REV. CODE ANN. § 5731.26(A) (Page Supp. 1967).

<sup>137</sup> OHIO REV. CODE ANN. § 5731.26(B) (Page Supp. 1967).

<sup>138</sup> OHIO REV. CODE ANN. § 5731.26(C) (Page Supp. 1967).

<sup>139</sup> OHIO REV. CODE ANN. § 5731.27(A) (Page Supp. 1967).

<sup>140</sup> OHIO REV. CODE ANN. § 5731.27(B) (Page Supp. 1967).

<sup>141</sup> OHIO REV. CODE ANN. § 5731.27(C)(1),(2) (Page Supp. 1967).

<sup>142</sup> OHIO REV. CODE ANN. § 5731.30 (Page Supp. 1967).

among others, the court is granted jurisdiction to determine all questions concerning the proper determination of both taxes and penalties involved.<sup>143</sup> Upon a redetermination of tax by the court, if no appeal is taken, the Tax Commissioner is required to issue a certificate of determination reflecting the corrections made.<sup>144</sup>

Appeals may be taken by any party, including the Tax Commissioner, from the final order of the probate court in the manner provided by law for appeals from orders of the probate court in other cases. Upon redetermination of taxes pursuant to such appeal, the Tax Commissioner is required to issue his certificate of determination reflecting the corrected determination.<sup>145</sup>

#### F. *Refund Claims*

If any deductible debts are proved against the gross estate after the basic tax has been determined, or if the tax determination is erroneous due to a mistake of fact, a refund claim may be filed. The claim may be filed by an executor, administrator, trustee, person in possession of property subject to tax, or any transferee thereof. The claim must be filed within three years from the time the return was required to be filed (determined without regard to any extension of time for filing), in the form prescribed by the Tax Commissioner. Filing of the claim must be made in the same manner as is prescribed for filing of the return, and determination of its correctness is to be made in the same manner as that prescribed for the return itself.<sup>146</sup>

#### G. *Tax Lien and Liability*

The taxes levied by the new law, until paid, are a lien upon all property subject thereto. Furthermore, the executor, administrator, trustee, or other person or corporation in possession of property subject to such taxes, or any transferee thereof other than a bona fide purchaser for full value, is personally liable for all such taxes with interest until paid. Among other things, it is provided that an administrator, executor, or trustee may sell so much of the estate of the decedent as will enable him to pay said taxes, the same as he may do for payment of the debts of the decedent.<sup>147</sup> Moreover, no final account of an executor or administrator may be approved

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<sup>143</sup> OHIO REV. CODE ANN. § 5731.31 (Page Supp. 1967).

<sup>144</sup> OHIO REV. CODE ANN. § 5731.30 (Page Supp. 1967).

<sup>145</sup> OHIO REV. CODE ANN. § 5731.32 (Page Supp. 1967).

<sup>146</sup> OHIO REV. CODE ANN. § 5731.28 (Page Supp. 1967).

<sup>147</sup> OHIO REV. CODE ANN. § 5731.37 (Page Supp. 1967).

by the probate court until there has been filed with the court a certificate of the Tax Commissioner showing final determination of the taxes and also a receipt certified by the Commissioner indicating payment of all taxes so determined.<sup>148</sup>

#### H. *Statute of Limitations*

No liability for payment of the taxes levied by the new law, including interest and penalties thereon, may be determined or asserted subsequent to three years after the required returns are filed. If there is litigation pending at the expiration of such three-year period, the tax liability may be determined at any time until the expiration of one year after final determination of such litigation. It is also expressly provided that any lien in real estate created under the new law shall become void upon the expiration of ten years after the date of decedent's death.<sup>149</sup>

#### I. *Conflicting Intergovernmental Claims*

Where a decedent is claimed to have been domiciled in this state and is likewise claimed to have been domiciled in another state, territory, or possession of the United States, or of the District of Columbia, the Tax Commissioner with the approval of the probate court may enter into a written agreement or compromise with the taxing authorities of such other jurisdiction and representatives of the estate that a specified amount may be accepted in full satisfaction of all taxes, interest or penalties. The agreement must also fix the amount to be accepted by such other jurisdiction. Unless the amount of tax agreed upon is paid within sixty days after execution of the agreement, interest and penalties will accrue.<sup>150</sup>

The domiciliary state of a nonresident decedent is granted the right to sue in the courts of this state to enforce claims for taxes, penalties and interest due to such other state. However, this right is conditioned upon the existence of a reciprocal statutory right granted to this state by the laws of the state of the decedent's domicile.<sup>151</sup>

#### J. *Consents To Transfer Property*

As under the old inheritance tax law, consents to transfer property must be obtained from the State Tax Commissioner in

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<sup>148</sup> OHIO REV. CODE ANN. §§ 5731.29, 5731.33 (Page Supp. 1967).

<sup>149</sup> OHIO REV. CODE ANN. § 5731.38 (Page Supp. 1967).

<sup>150</sup> OHIO REV. CODE ANN. § 5731.35 (Page Supp. 1967).

<sup>151</sup> OHIO REV. CODE ANN. § 5731.36 (Page Supp. 1967).

specified instances. Consents are required in all cases to transfer shares of stock of domestic corporations.<sup>152</sup> Financial institutions may transfer, without the Commissioner's consent, three-fourths of the deposits,<sup>153</sup> or the securities, assets or other property of the decedent,<sup>154</sup> whether held by them in trust or otherwise. They may not, however, transfer the contents of a safety deposit box, other than a will, deed to a burial lot, insurance policy or papers which have no apparent monetary value, unless the safety deposit box has been opened and inventoried in the presence of the Commissioner or his agent and a written consent to transfer issued.<sup>155</sup> Life insurance companies may not pay the proceeds of an annuity or matured endowment contract, or of a life insurance contract payable to the estate of a decedent, or of any other taxable insurance contract, without the written consent of the Tax Commissioner.<sup>156</sup> No trust company or other corporation or person may pay the proceeds of any death benefit, retirement, pension or profit sharing plan in excess of two thousand dollars without the written consent of the Tax Commissioner. However, they may pay the proceeds of any death benefit, retirement, pension or profit sharing plan which consists of insurance on the life of the decedent payable to a beneficiary other than the estate of the insured without the written consent of the Commissioner.<sup>157</sup> Consents are not required in order to transfer intangible personal property belonging to nonresident decedents.<sup>158</sup>

Notwithstanding the foregoing provisions, the Tax Commissioner is empowered to authorize any delivery or transfer, or to waive any of the foregoing requirements, under such terms and conditions as he may prescribe.<sup>159</sup> However, failure to comply with the statutory requirements renders the financial institution, life insurance company, or other corporation or person liable for the amount of taxes and interest due on the transfers involved and, in addition, liable to a penalty of not less than five hundred nor more than five thousand dollars.<sup>160</sup>

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<sup>152</sup> OHIO REV. CODE ANN. § 5731.39(A) (Page Supp. 1967).

<sup>153</sup> OHIO REV. CODE ANN. § 5731.39(B) (Page Supp. 1967).

<sup>154</sup> OHIO REV. CODE ANN. § 5731.39(E) (Page Supp. 1967).

<sup>155</sup> OHIO REV. CODE ANN. § 5731.39(F) (Page Supp. 1967).

<sup>156</sup> OHIO REV. CODE ANN. § 5731.39(C) (Page Supp. 1967).

<sup>157</sup> OHIO REV. CODE ANN. § 5731.39(D) (Page Supp. 1967).

<sup>158</sup> OHIO REV. CODE ANN. § 5731.40 (Page Supp. 1967).

<sup>159</sup> OHIO REV. CODE ANN. § 5731.39(G) (Page Supp. 1967).

<sup>160</sup> *Id.*

### K. *Compliance and Enforcement*

In addition to his adjudicatory powers hereinbefore discussed, the State Tax Commissioner is granted the power to adopt and promulgate regulations consistent with the new statutory provisions,<sup>161</sup> and to appoint and designate agents, examiners, experts, accountants and other assistants to aid him in the administration of the law. In such administration, the Commissioner is required to see that proceedings are instituted and carried to determination in all cases in which a tax is due.<sup>162</sup>

Finally, in addition to the various penal provisions, the statute authorizes the state's Attorney General to institute legal proceedings to collect delinquent estate taxes certified to him by the Tax Commissioner.<sup>163</sup>

### V. CONCLUSION

The new Ohio estate tax constitutes a desirable step forward. Because of its substantial conformity with the federal estate tax, it should facilitate procedures both for representatives of estates and for counsel. However, it is too early to predict with accuracy the impact of the new tax over that of the old inheritance tax. As the foregoing analysis has indicated, many features of the federal law have been omitted. There is no marital deduction, no alternative valuation date, no credit for tax on prior transfers, no foreign death tax credit, and no deduction for federal estate tax. These omissions are likely to have a significant impact in some estates. But this is not to deprecate the new law. If changes are found to be desirable, there is always another legislative day.

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<sup>161</sup> OHIO REV. CODE ANN. § 5731.45 (Page Supp. 1967).

<sup>162</sup> OHIO REV. CODE ANN. §§ 5731.41, 5731.45 (Page Supp. 1967).

<sup>163</sup> OHIO REV. CODE ANN. §§ 5731.42, 5731.43 (Page Supp. 1967).